

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AUZZIE JO FULLER, Minor.

SANDRA FURLONG,

Petitioner-Appellee,

v

KRISTINA LEE BRANDENBURG,

Respondent-Appellant.

UNPUBLISHED

May 10, 2007

No. 273963

Eaton Circuit Court

Family Division

LC No. 03-014474-NA

Before: Markey, P.J., and Sawyer and Bandstra, JJ.

PER CURIAM.

Respondent Kristina Lee Brandenburg appeals by right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(d), (g), and (j). We affirm.

Petitioner Sandra Furlong is the minor child's maternal grandmother and guardian. When the minor child was 14 months old, she was placed with petitioner in a limited guardianship. A limited guardianship placement plan was created which required that respondent participate in several services, including, among other things, parenting classes and drug assessment and treatment. Less than six months later, when respondent failed to comply with the placement plan, the limited guardianship was converted to a full guardianship. Sometime later, respondent's whereabouts were unknown for nearly 18 months. When respondent returned, she contacted petitioner in an effort to reunite with her daughter. Shortly thereafter, petitioner filed a petition seeking termination of respondent's parental rights. The trial court granted petitioner's petition. At the time, the minor child was seven years old.

Respondent first argues that her parental rights were improperly terminated on the basis of hearsay evidence. While we agree that legally admissible evidence was required to terminate respondent's parental rights because termination was sought at the initial dispositional hearing, MCR 3.977(E)(3), we do not find that the court's admission of hearsay requires reversal. Even if some hearsay evidence was received, the mere existence of hearsay at the termination hearing does not warrant reversal where there was ample clear and convincing, legally admissible evidence to support termination of respondent's parental rights. *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2002). Because there was clear and convincing legally admissible evidence establishing the grounds for termination, in particular respondent's own testimony, we reject this claim of error.

Next, respondent argues that the trial court erred when it terminated her parental rights pursuant to MCL 712A.19b(3)(d), which provides that parental rights may be terminated when a parent fails to comply with a limited guardianship placement plan and such noncompliance results in the disruption of the parent-child relationship. While the trial court's interpretation of the statute was erroneous, the error does not require reversal.

In finding that respondent failed to comply with the placement plan, the court considered respondent's conduct and inaction after the placement plan terminated. We find this to be inconsistent with plan language of the Probate Code and Estates and Protected Individuals Code. MCL 712A.19b; MCL 700.5205. A limited guardianship is a creature of statute. The Estates and Protected Individuals Code requires that when a limited guardianship is created, a limited guardianship placement plan must be developed. Further, the placement plan must contain a provision that sets forth the duration of the limited guardianship. MCL 700.5205(2)(c). The trial court's construction of the statute results in the potential for a parent to be bound to the terms of a limited guardianship placement plan even after the limited guardianship has expired or terminated. The lower court's interpretation of the statute is inconsistent with the requirement that the placement plan set forth a termination date for the limited guardianship and renders nugatory this duration clause. A court must, if possible, give effect to every clause and sentence of a statute, and avoid a construction that renders any part of the statute surplusage or nugatory. *Pohutski v City of Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002). Thus, the trial court erred when it relied on respondent's conduct after the plan terminated in support of its finding that respondent failed to comply with the placement plan. The court should have only considered respondent's conduct and efforts made during the life of the placement plan.

Although we find that the trial court erred when it considered respondent's actions after the limited guardianship ceased, the trial court did not err when it terminated respondent's parental rights pursuant to MCL 712A.19b(3)(d). This statute provides that the court may terminate a parent's parental rights if the parent fails to comply with the terms of the limited guardianship placement plan and such failure disrupts the parent-child relationship. Respondent candidly admitted that she failed to comply with the terms of the plan. Foster care workers further confirmed that respondent, during the life of the placement plan, failed to comply with the requirements of the plan. Thus, there existed clear and convincing evidence to support termination pursuant to MCL 712A.19b(3)(d).

Respondent, additionally, contends that because the plan expired five years before the termination hearing, respondent's failure to comply during the life of the plan was irrelevant and, therefore, could not be used as grounds for termination. There is no "statute of limitations" included within the statutory provisions. Furthermore, any claim that a parent would be unjustly prejudiced by an extremely remote failure to comply with a placement plan is addressed by the language of MCL 712A.19b(5). Under the provisions of § 19b(5), the court can always, despite grounds for termination, refuse to order termination of parental rights if termination would not be in the child's best interests.

Finally, respondent argues that the trial court clearly erred in finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(g) and (j) were established by clear and convincing evidence. We disagree. We review the trial court's findings of fact for clear error. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). There was sufficient evidence from which the court could conclude that respondent failed to provide proper care and

custody for the minor child and that the child would be at risk if returned to respondent's care. Respondent had not parented her child since she was 14 months old. Although respondent did place her daughter in a limited guardianship, which was then converted into a full guardianship, she did not initiate the guardianships and did not participate in the guardianships. Respondent sporadically visited her daughter and, indeed, was gone for nearly 18 months immediately before the filing of the petition. Respondent never inquired into the child's progress in school or her medical well-being. Further, respondent did not have suitable housing for her and her daughter at the time of the termination hearing.

There was also clear and convincing evidence that respondent would not be in a position to provide proper care and custody for her daughter within a reasonable time considering the child's age. Respondent candidly admitted that it would be a year or two before she could parent her child. Moreover, respondent had not adequately addressed her substance abuse issues. Respondent did not take responsibility for her addictions; instead, she found it easier to blame her husband and petitioner. Further, respondent continued to engage in activities that heightened the risk of relapse. Considering the foregoing, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

We affirm.

/s/ Jane E. Markey

/s/ David H. Sawyer

/s/ Richard A. Bandstra